IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 395 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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LALIT PETER DABHI

Versus

SHANKARANAND ESTATE PVT. LTD.

Appearance:

1. Civil Revision Application No. 395 of 2002

MR RAMNANDAN SINGH for Petitioner No. 1

MR NILESH A PANDYA for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 09/04/2002

ORAL JUDGEMENT

1. Mr.Singh appearing for the petitioner seeks permission to delete respondent No.2 from this Revision Application. Permission to delete respondent No.2 is granted.

2. Rule. Mr. N.A.Pandya waives service of rule on behalf of respondent No.1. By consent rule is fixed forthwith.

3. Heard Mr.Singh appearing for the petitioner and Mr. N.A.Pandya for respondent No.1 - original plaintiff. During hearing I was taken through the order under challenge passed by the learned trial Judge on 23.2.2001 below Application Exh.46 filed by the petitioner defendant No.1. I was also taken through the written statement filed by the petitioner - defendant No.1 in the Suit filed by the respondent No.1 - original plaintiff in the court of the learned Civil Judge (S.D.), Vadodara being Regular Civil Suit No.634/90 as well as the list of documents, upon which the defendant has placed reliance in support of his case for which the application for production of the documents was made. The learned trial Judge, after considering the Application, has permitted to produce some of the documents on the list, namely, documents Nos. 1,2,6 to 11. However, documents Nos.3 to 5 were refused on the ground that these documents were in the custody of the defendant and defendant has not furnished any reason why these documents were not produced at the earliest in point of time and accordingly the Application Exh.46 was partly allowed. I was also taken through the documents, which the petitioner wants to produce before the trial court.

4. Mr. Nilesh Pandya appearing for respondent No.1 has vehemently urged while opposing this Revision Application that this is not a matter where this court is required to interfere with the order under challenge while exercising my revisional jurisdiction and he has also placed reliance upon Order 13 of the C.P.C. Admittedly the Application for production of certain documents is filed in a Suit which was filed by the plaintiff in the year 1990 and the Application was submitted after long delay of more than 11 years i.e. on 25.1.2001 and further that by that time the issues were already framed by the learned trial Judge.

5. Considering the submissions, there is no dispute about the provisions of Order 13 of the C.P.C. relied upon by Mr.Pandya and further that in the present case,the issues were already framed earlier in a Suit of 1990 and the Application for production of documents were filed at a belated stage. However, the fact remains that the documents, upon which the defendant has placed reliance, are in respect of the claim made by the plaintiff, which is to be adjudicated by the trial court.

These documents are between the petitioner and defendant No.2 and so far as the execution of such document between the petitioner and defendant No.2 is concerned, it is contended by Mr. Pandya that the defendant No.2 has in term denied to have executed such document, which the petitioner wants to produce. The petitioner defendant No.1 has referred to in his written statement in respect of the transaction between the petitioner and defendant No.2 in respect of the suit property. Considering the order under challenge, by granting production, it is not to be considered that these documents are proved. Parties are required to prove these documents during the trial. Accordingly, I am of the view that the learned trial Judge was not right in rejecting the production of certain documents as per his order, as the petitioner defendant No.1 has to prove these documents during the trial. Accordingly part of the order passed by the learned trial Judge deserves to be set aside and the documents, production of which have been refused, are ordered to be produced before the trial court. However, it is to be observed that by granting such production, it should not be considered that these documents are proved. Revision Application is accordingly allowed. Rule is made absolute.

As observed earlier, even the Application for production is filed after 11 years and even after the issues were framed by the trial court. While granting this Revision Application, the petitioner is ordered to pay cost to the respondent No.1 and Mr. Singh, appearing for the petitioner, has agreed that the petitioner will pay a sum of Rs.2500/-- to the respondent - plaintiff. Accordingly the petitioner is directed to deposit the amount of cost of Rs.2500/-- before the trial court and the respondent - plaintiff is permitted to withdraw the said amount by way of costs.Direct service is permitted.

(D.K.Trivedi,J)

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